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REPLY BRIEF (P)

SUPREME COURT OF KENTUCKY

FILE NO. 75-102

HELEN MARIE BEGLEY

(WARREN) APPELLANT

VS:

JEFFREY J. KILBURN, an infant,
suing by and through his Next Friend,

WARNER KILBURN, et al APPELLEES

APPEAL FROM ESTILL CIRCUIT COURT
HON. EARL F. ASHCRAFT, JUDGE

RESPONSE TO APPELLANT'S PETITION FOR REHEARING

FILED

MAY 21 1976

MARSHA LAYNE COLLINS
CLERK
SUPREME COURT

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This is to certify that a true copy of this Response to Appellant's Petition for Rehearing has been served upon W. R. Patterson, Jr., Landrum, Patterson & Dickey and upon Hon. Earl F. Ashcraft, Judge, Estill Circuit Court, this 20 day of May, 1976.

John M. Coy
Counsel for Appellees *cs*

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MAY IT PLEASE THE COURT:

The Appellant's Petition for Rehearing merely goes over the same points raised in the original Brief for Appellant. Admittedly, they are stated in a different way, but they are the same points and all of them were answered by the Memorandum Opinion Per Curiam rendered on April 16, 1976. Moreover, each point was answered by the citation of authority and if the Court should depart from its Opinion in the instant case it would also depart from precedents

which have been firmly established for a number of years.

Appellant states on page 15 of her Petition for Rehearing "The thread which runs so true through all of these opinions is that which secures to the defendant a fair opportunity to present his claim at a trial on the merits and to prevent in fact or appearance the inherent injustice in the default judgment procedure where the party has not been afforded due process." The appellees are in complete agreement with this rule; apparently the appellant is not. She desires that this court define the term "correct address" as that address where a person actually lives at the time of filing a suit. *Hess v. Pawloski*, 274 U.S. 352, 47 S. Ct. 643, 71 L. Ed. 1091 (1927) and *Hirsch v. Warren*, 235 Ky. 62, 68 S.W. 2d 767 (1934), the appellant's "big guns" so to speak require only that the non-resident motorist statutes contain a provision making it "*reasonably probable*" that the notice will be communicated to the person sued. Obviously, "correct address" is one which is not a falsehood or just pulled out of the air, but one which, in the language of the *Hess* and *Hirsch* cases, make it reasonably probable that the notice will be communicated to the person sued. The appellant established by her own affidavit that she had five different addresses during the pendency of this matter. Certainly when a driver possessing a Florida operator's license, driving an automobile

with Florida registration plates (Tr. p. 25) appears to have a Florida address, that is the very, and probably the only, address calculated to make it reasonably probable that the notice will be communicated to the person sued. The appellees fully complied with appellant's "thread that runs so true."

Appellant absolutely refuses to face up to the far reaching consequences of the rule she would have this Court adopt. If such were the rule, the trial judge in this case would have had to refuse to give the appellee a judgment, Mrs. Warren would be living in Fort Meyers, Florida (assuming that this woman who has had two names and five different addresses within a period of some year and a half took some intermission in her peregrinations) and the appellees would have been denied their day in court, all notwithstanding the fact that Mrs. Warren had a Florida operator's license, Florida automobile registration and a Florida address. If this Court should adopt the rule for which the appellant argues, the word would spread like wildfire across the fifty states and Canada, "If you have a wreck in Kentucky, give a false address and get out of the state."

In order to afford equity not only to the appellee, but to all motorists using Kentucky highways, and in order to *lessen* the chance of fraud

in cases of this nature, the Memorandum Opinion
Per Curiam must stand.

Respectfully submitted,

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